



STEVEN L. BESHEAR
Governor

FINANCE AND ADMINISTRATION CABINET
DEPARTMENT OF REVENUE
501 HIGH STREET
FRANKFORT, KENTUCKY 40620
Phone (502) 564-3226
Fax (502) 564-3875
www.kentucky.gov

LORI HUDSON FLANERY
Secretary

THOMAS B. MILLER
Commissioner

In the matter of:

[REDACTED]

Contact:

[REDACTED]

FINAL RULING NO. 2015-23
June 12, 2015

Sales and Use Tax Assessment for the audit period of
November 30, 2011

FINAL RULING

The Department of Revenue ("the DOR") has a sales and use tax assessment against [REDACTED] (" [REDACTED] ") for the audit period November 30, 2011. The following schedule reflects the outstanding liability for this period:

Period	Tax Due	Interest as of 6/12/15	Penalty	Total Due
November 30, 2011	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Information available to the DOR indicated that [REDACTED] purchased an all terrain vehicle (ATV) for \$ [REDACTED]. This information also indicates Kentucky Sales Tax was not paid at the point of purchase due to a signed farm machinery exemption certificate given to the vendor. According to [REDACTED]' 2011 Schedule F, horses are the principal product. However, the farm exemption certificate does not apply to horses, but is limited to livestock or poultry, the products of which ordinarily constitute food for human consumption. Therefore, an assessment in the amount of \$ [REDACTED] (plus applicable interest and penalty) was created. [REDACTED] timely protested the assessment.

At issue is whether the taxpayer has submitted the necessary information to show that the ATV is used exclusively and directly in the business of farming as defined in KRS 139.480(11).

██████████ protest was on the basis that the ATV is used for the raising and feeding of livestock daily. To support this claim, ██████████ provided his Schedule F; however, that schedule was provided with a handwritten note 'Hay – Cattle' for principal crop or activity next to the typed word 'Horses'. ██████████ also provided an affidavit stating that the purchase of the ATV is exclusively and directly used in the production of cattle feeding. No explanation was provided in the affidavit regarding the horses. In order to qualify for the exemption, the ATV has to be exclusively used, and if the ATV is also being used in connection with the horses, it does not meet that exclusivity requirement.

The DOR's position is the farm machinery exemption certificate applies if the ATV is used exclusively and directly in the business of tilling and cultivating the soil for the production of crops, or raising and feeding livestock or poultry, the products of which constitute food for human consumption, pursuant to KRS 139.480(11), at the time of purchase.

KRS 139.480 (11)(a)(b) states:

Any other provision of this chapter to the contrary notwithstanding, the terms "sale at retail," "retail sale," "use," "storage," and "consumption," as used in this chapter, shall not include the sale, use, storage or other consumption of:

(11) Farm machinery. As used in this section, the term "farm machinery":

(a) Means machinery used exclusively and directly in the occupation of:

1. Tilling the soil for the production of crops as a business;
2. Raising and feeding livestock or poultry for sale; or
3. Producing milk for sale;

(b) Includes machinery, attachments, and replacements therefore, repair parts, and replacement parts which are used or manufactured for use on, or in the operation of farm machinery and which are necessary to the operation of the machinery, and are customarily so used, including but not limited to combine header wagons, combine header trailers, or any other implements specifically designed and used to move or transport a combine head;

Despite multiple requests for the additional information, [REDACTED] has provided no evidence or persuasive argument that the farm machinery exemption would apply to the purchase of the ATV. The assessment issued by the DOR to [REDACTED] is presumed correct, with the burden resting on [REDACTED] to prove otherwise. Hahn v. Allphin, 282 S.W. 2d 824 (Ky. 1955). [REDACTED] has not provided the DOR with evidence that would suffice to meet this burden.

A penalty has been assessed pursuant to KRS 131.180(2) because of [REDACTED] failure to have timely paid at least 75% of the tax determined to be due by the DOR. [REDACTED] has provided nothing that would indicate that this penalty was erroneously applied or that it should be waived or abated.

Based on the above, the outstanding sales and use tax assessment totaling \$ [REDACTED] (plus applicable interest and penalty) is a legitimate liability of [REDACTED] due to the Commonwealth of Kentucky.

This letter is the final ruling of the Department.

APPEAL

You may appeal this final ruling to the Kentucky Board of Tax Appeals pursuant to the provisions of KRS 131.110, KRS 131.340-131.365, 103 KAR 1:010 and 802 KAR 1:010. If you decide to appeal this final ruling, your petition of appeal must be filed at the principal office of the Kentucky Board of Tax Appeals, 128 Brighton Park Boulevard, Frankfort, Kentucky 40601-3714, within thirty (30) days from the date of this final ruling. The rules of the Kentucky Board of Tax Appeals, which are set forth in 802 KAR 1:010, require that the petition of appeal must:

1. Be filed in quintuplicate;
2. Contain a brief statement of the law and facts in issue;
3. Contain the petitioner's or appellant's position as to the law and facts; and
4. Include a copy of this final ruling with each copy of the petition of appeal.

The petition of appeal must be in writing and signed by the petitioner or appellant. Filings by facsimile or other electronic means shall not be accepted.

Proceedings before the Kentucky Board of Tax Appeals (the "Board") are conducted in accordance with 103 KAR 1:010, 802 KAR 1:010 and KRS 131.340-131.365 and KRS Chapter 13B. Formal hearings are held by the Board concerning the tax appeals before it, with all testimony and proceedings officially reported. Legal representation of parties to appeals before the Board is governed by the following rules set forth in Section 3 of 802 KAR 1:010:

1. An individual may represent himself in any proceedings before the Board where his individual tax liability is at issue or he may obtain an attorney to represent him in those proceedings;
2. An individual who is not an attorney may not represent any other individual or legal entity in any proceedings before the Board;
3. In accordance with Supreme Court Rule 3.020, if the appealing party is a corporation, trust, estate, partnership, joint venture, LLC, or any other artificial legal entity, the entity must be represented by an attorney on all matters before the Board, including the filing of the petition of appeal. If the petition of appeal is filed by a non-attorney representative for the legal entity, the appeal will be dismissed by the Board; and
4. An attorney who is not licensed to practice in Kentucky may practice before the Board only if he complies with Rule 3.030(2) of the Rules of the Kentucky Supreme Court.

You will be notified by the Clerk of the Board of the date and time set for any hearing.

Sincerely,
FINANCE AND ADMINISTRATION CABINET

Attorney Manager
Office of Legal Services for Revenue

CERTIFIED MAIL
RETURN RECEIPT REQUESTED